

Pentagon Barber Shop, Inc. and United Food and Commercial Workers Local 400, Barbers & Cosmetologists Division, Petitioner. Case 5-RC-11354

April 29, 1981

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hearings were held before Steven L. Shuster, Hearing Officer of the National Labor Relations Board. Following the hearings and pursuant to Section 102.67(h) of the Board's Rules and Regulations, Series 8, as amended, and by direction of the Regional Director for Region 5, this case was transferred to the Board for decision. Briefs have been filed by the Petitioner and the Employer.

The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds that, for the reasons stated below, it will not effectuate the policies of the Act to assert jurisdiction over the Employer.

The Employer is engaged in the operation of a barbershop in the concourse of the Pentagon Building in Arlington, Virginia. The concourse also contains a variety of other commercial businesses, including a bookstore, a department store, a greeting card store, a drycleaners, and a florist. All of the stores in the concourse are open to the general public, but are closed on Saturdays, Sundays, and holidays. The Employer's business is not within a designated security area and is located 20 feet from a major subway entrance. The Employer employs 17 barbers and 5 beauticians, whom the Petitioner seeks to represent, and operates its business pursuant to a concession agreement with the Defense Department Concessions Committee, to whom it pays an annual fee. The agreement provides that the rates charged by the Employer must be approved by the Concessions Committee, and the record discloses that those rates are somewhat lower than the standard rates charged in the local vicinity.

At the hearing the parties stipulated that during the past 12 months, a representative period, the Employer received gross revenues in excess of \$443,161.85, and purchased and received materials and supplies valued in excess of \$6,000 directly from points located outside the Commonwealth of Virginia. The direct inflow of \$6,000 establishes the Board's statutory jurisdiction,¹ but the Employer's operations do not satisfy the Board's retail stand-

ard, which requires a gross volume of business of at least \$500,000 per year.

Nonetheless, the Petitioner contends that the Board should assert jurisdiction in this case based on its national defense standard. In *Ready Mixed Concrete & Materials, Inc.*, 122 NLRB 318, 320 (1958), the Board determined that it would best effectuate the policies of the Act "to assert jurisdiction over all enterprises, as to which the Board has statutory jurisdiction, whose operations exert a substantial impact on the national defense, irrespective of whether the enterprise's operations satisfy any of the Board's other jurisdictional standards." In adopting this standard the Board noted its "special responsibility as a Federal agency to reduce the number of labor disputes which might have an adverse effect on the Nation's defense effort." For the reasons below, we find that the Employer's operations do not exert a substantial impact on the national defense.

We note initially that the barbershop is located outside of designated security areas and within a shopping center which is open to the general public as well as to employees of the Pentagon. The shop is also easily accessible to the public in view of its proximity to a major subway entrance. In this respect the instant case is distinguishable from other situations in which the Board has asserted jurisdiction under the national defense standard. In *Spruce Up Corporation*, 194 NLRB 841 (1972), the employer operated 19 barbershops on the military installation at Fort Bragg, North Carolina, and its services were supplied exclusively to military personnel.² Similarly, in *Colonial Catering Company*, 137 NLRB 1607 (1962), the employer was engaged in providing food services on the premises of a defense contractor, and its services were utilized solely by the contractor's employees.³ Therefore, in view of the markedly different circumstances in the instant case, we find that the link between the Employer's operations and the national defense effort is not as strong as that exhibited in *Spruce Up Corporation* and *Colonial Catering Company*.

The record also discloses that, although the Employer operates the only barbershop in the Pentagon Building, numerous other barbershop facilities are available to Pentagon employees in the local vi-

² The employer in that case also satisfied the Board's retail standard. See also *Gino Morena d/b/a Gino Morena Enterprises*, 181 NLRB 808 (1970), where the employer operated a number of barbershops on military installations in California. The Board asserted jurisdiction under both the retail standard and the national defense standard.

³ See also *Otha T. Coburn, Individual, d/b/a Coburn Catering Company*, 100 NLRB 1133 (1952), where the Board noted that the employer's food services were used only by employees of the company engaged in defense projects.

¹ See *Marty Levitt*, 171 NLRB 739 (1968); *Somerset Manor, Inc.*, 170 NLRB 1647 (1968).

cinity. In this regard the instant case is further distinguishable from *Colonial Catering Company*, where the Board emphasized the lack of sufficient nearby restaurant facilities in finding that the employer's food services constituted an integral and essential part of the defense contractor's operations.⁴ It was in this context of insufficient alternative facilities that the Board further observed that a strike or picketing involving the employer's employees could disrupt the contractor's operations and have an adverse impact on the national defense. In contrast, a similar labor dispute at the

⁴ Similarly, in *Coburn Catering Company, supra*, the Board observed that the employer's facility constituted "the only practical source of mealtime food" for the employees of the company engaged in defense projects.

Employer's facility could not conceivably cause a significant disruption to the work at the Pentagon. In the event of a strike or picketing, Pentagon employees would have easy access to other barber-shop facilities in the vicinity, and at most would suffer an inconvenience.

In view of the above circumstances, we find that the Employer's operations do not exert a substantial impact on the national defense, and that the policies of the Act would not be effectuated by the assertion of jurisdiction in this case. We shall therefore dismiss the petition.

ORDER

It is hereby ordered that the petition filed herein be, and it hereby is, dismissed.